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*U.S. Environmental Protection Agency U.S. Army Corps of Engineers
U.S. Office of Surface Mining U.S. Fish and Wildlife Service
West Virginia Division of Environmental Protection*

Mountaintop Mining/Valley Fill Environmental Impact Statement (EIS) Bulletin 3

This Bulletin

..... Updates Bulletin 2, regarding technical study work plans and review

..... Describes the EIS “Program Review Process”, and announces associated public meetings in December 1999

Background. The U.S. Environmental Protection Agency (EPA), U.S. Office of Surface Mining (OSM), U.S. Army Corps of Engineers (COE), U.S. Fish and Wildlife Service (FWS), and West Virginia Division of Environmental Protection (WVDEP) are cooperating in the preparation of an EIS on mountaintop mining and valley fill operations in the Appalachian coalfields.

The purpose of the EIS is *"to consider developing agency policies, guidance, and coordinated agency decision-making processes to minimize, to the maximum extent practicable, the adverse environmental effects to waters of the United States and to fish and wildlife resources from mountaintop mining operations, and to environmental resources that could be affected by the size and location of fill material in valley fill sites."* The Commonwealths of Kentucky and Virginia are participating in the EIS process, providing available data regarding operations within their jurisdictions. The draft EIS is on schedule to be released for public comment during the summer of 2000. The final EIS is slated for completion by January 2001.

NOTE! Some of the regulatory issues being examined in the EIS are the subject of litigation in West Virginia. On Wednesday October 20, 1999, Chief Judge Charles H. Haden II (Southern District of West Virginia, United States District Court) ruled on legal issues related to valley fills. The Court ruling held that the buffer zone requirement means what it says and protects the entire length of intermittent and perennial streams, not just portions (pgs. 40 and 18 of the Order); that placement of valley fills in intermittent and perennial streams violates Federal and State water quality standards by eliminating the buried stream segments for the primary purpose of waste assimilation (pg. 45); and that overburden or excess spoil is a pollutant and waste material, not “fill material” subject to Corps authority under Section 404 of the Clean Water Act when it is discharged into waters of the United States for the primary purpose of waste disposal (pg. 31).

The Court (by Memorandum Opinion and Order entered October 29, 1999) granted a stay of its October 20 ruling, pending appellate action. While the Court decision and subsequent events will have a bearing on the ultimate policy and program recommendations which are made in the EIS, the agencies believe that the EIS preparations and technical studies need to proceed on schedule. The EIS and studies will provide valuable information for Federal and State policy-makers to address the significant issues associated with minimizing the adverse environmental effects of mountaintop mining and valley fills. The multi-state scope of the EIS, and the cooperation among Federal and State agencies in the EIS process, will also help in harmonizing policies across State lines.

Previous EIS Bulletins. On May 26, 1999, EPA sent EIS Bulletin 1 to those who registered at EIS scoping meetings in Summersville, Charleston, or Logan, West Virginia, and to those who sent in a comment letter in response to the February 5, 1999, EIS Notice of Intent. Bulletin 1 summarized comments received during the scoping process, provided the goals which the agencies adopted for the EIS process, outlined the framework of the EIS, and announced a new opportunity for public input regarding the program review, which is central to the purpose of the EIS as described above. Bulletin 1 is available on EPA's Mountaintop Mining website. See May 1999 Edition at <http://www.epa.gov/region3/mtntop/bulletin.htm>

Bulletin 2 was published in August on EPA's website and describes the technical studies and symposia that are being developed to address many of the issues which have been raised during the scoping process concerning mountaintop mining and valley fill impacts. Information developed through the studies and meetings will be used in the EIS preparation, and some studies could continue even beyond the EIS. Bulletin 2 is available at <http://www.epa.gov/region3/mtntop/bulletin.htm> (see August 1999 Edition).

UPDATE - TECHNICAL STUDY PLANS AND REVIEW

The EIS Steering Committee is pleased to acknowledge the recent funds provided by the West Virginia Legislature, through its Legislative Council to Research MTM/VF. The Legislature's contribution of approximately \$700 thousand is leveraging \$875 thousand to fund academic and technical studies to augment and reinforce the Federally-supported studies for the EIS.

Several technical work plans were published on EPA's website after Bulletin 2. All work plans were reviewed in October, and some are being revised, especially to incorporate the State-funded studies. **All work plans should be available on the EPA website by November 15.** The team leaders for each of the technical studies described in Bulletin 2 have also begun to prepare **monthly progress reports** on their work efforts, beginning this month. These progress reports should appear on the EPA mountaintop mining webpage shortly after the first of each month.

On November 18 at WVDEP's office in Nitro, WV, the team leaders of the EIS technical studies will meet with experts from the coal industry and environmental community to discuss progress on the studies and review future plans. This meeting will allow the industry and environmental experts to provide valuable technical input to the study teams. More information about the

meeting can be obtained from David Vande Linde, WVDEP. His telephone number is 304 759-0510.

PROGRAM REVIEW PROCESS

The **heart** of the EIS is **analysis of alternatives**. The **program review process**, which is being directed by the interagency EIS Steering Committee, will result in identification of the program alternatives to be analyzed in the EIS.

Specifically, the agencies are considering possible changes in Federal and State policies and rules, development of better technical guidance, improved program coordination and program implementation needs (such as training and communication practices; increased funding for monitoring and citizen coordination activities). The possible actions will be analyzed as alternatives in the EIS. Many ideas have been put forward, for instance in the public comments and the West Virginia Governor's Task Force Report issued last December. Before the alternatives are "packaged" for analysis in the EIS, the agencies will seek public input again.

Program Review Meetings. To initiate the program review, the EIS Steering Committee conducted a series of meetings over the summer to review current programs and policies, and to develop proposed alternatives. These meetings, termed "Domain" meetings by the Steering Committee, had two main components:

- S** To familiarize the Steering Committee members with each agency's jurisdiction and regulatory requirements relative to mountaintop mining and valley fills.
- S** To generate ideas, using "brainstorming" techniques, for possible program changes and/or interagency coordination to analyze as alternatives in the draft EIS.

The Domain Meetings were organized by programmatic topics based on EIS scoping questions developed in earlier public participation:

- S** Domain 1 (June) - Human and Community Impacts
 - C** Cultural and Historic Resources
 - C** Quality of Life
 - C** Economic Resources
- S** Domain 2 (July) - Terrestrial Impacts
 - C** Visual Landscape (Geomorphology)
 - C** Terrestrial Biota
 - C** Forest and Other Ecological Resources
- S** Domain 3 (August) - Aquatic Impacts
 - C** Definitions and Measures
 - C** Environmental Impacts
 - C** Procedures and Requirements
- S** Domain 4 (September) - Miscellaneous
 - C** Air Resources

- C Blasting
- C Mitigation
- C Post-mining Land Use

The Domain process generated a large body of ideas for government action, which are being sorted by issue topic and type of action. Types of action include:

- S training/outreach/involvement/education
- S guidance
- S regulatory change
- S interagency coordination
- S program review
- S implementation processes
- S policy direction

Outreach Plan. The list of potential ideas for government action is tentatively scheduled to be mailed to the public by EPA Region III during the week of November 22, 1999. The document will also be available for download and printing from EPA's website. There will be several opportunities to give feedback on the ideas. Written comments can be submitted to:

William Hoffman
Environmental Service Division (3ES30)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
Phone: (215) 814-2995
Fax: (215) 814-2783

The ideas for government action will be presented in a table with columns where reviewers who wish to comment can suggest rejection of, or denote the relative priority placed on each idea. Additional space will be available in the table to propose revision of existing ideas or to add new ideas.

Public meetings are also planned to seek feedback on the ideas, as follows:

December 14, 1999: Charleston, West Virginia
December 16, 1999: Hazard, Kentucky

The exact times and locations of these public meetings will be provided with the mailing. Prior to the public meetings, EIS Steering Committee members are planning to meet with several groups who have asked for an opportunity to discuss the program review process and provide input. We are available for additional meetings, as needed. Contact William Hoffman at EPA Region III (telephone number above) if you would like to schedule one.

Following the public outreach process, the EIS Steering Committee will prepare the final list of ideas, group them into the proposed alternatives, and give them to the EIS contractor and agency program specialists/attorneys for detailed programmatic review and draft alternative analysis. In order to keep the EIS process on schedule, this needs to occur by the end of December.

Formal public comments will be sought on the alternatives and the analysis when the draft EIS is published in June 2000. In the meantime, we will keep you informed of progress on the EIS and technical studies, and provide notice of meetings, through future issues of the Bulletin.